Office-Supreme Court, U.S.
FILED
JUN 8 1983
ALEXANDER L. STEVAS,
CLERK

82-1852

No. ———

IN THE

Supreme Court of the United States

October Term, 1982

HANNELORE ADAMSONS,

Petitioner,

against

AMERICAN AIRLINES,

Respondent.

Respondent's Brief in Opposition to Petition for Certiorari

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June, 1983

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Respondent's Brief in Opposition to Petition for Certiorari.

Reasons for Denying the Writ.

Petitioner has set forth two reasons for requesting certiorari in the case at bar.

It is alleged that there is a conflict between the decision of the New York Court of Appeals and a decision of the Ninth Circuit Court of Appeals.

It is also alleged that the issue presented involves an important area of federal law.

Respondent respectfully submits that there is no conflict as alleged and that the issue presented does not warrant review by the United States Supreme Court.

ARGUMENT.

I.

There is no conflict between the decision of the New York Court of Appeals and the Ninth Circuit Court of Appeals.

Respondent disagrees with petitioner's interpretation of the New York Court of Appeals' citation of *Cordero v. CIA Mexicana DeAviacion,* 681 F. 2d 669 (9th Cir. 1982).

The New York Court of Appeals' citation of said case was simply a cumulative citation to the other cases relied upon and the quotation from the District Court's opinion in the *Cordero* case was a correct statement of law. *Cordero v. CIA Mexicana DeAviacion,* 512 F. Supp. 205 (Central District of Cal., 1981).

In fact, the New York Court of Appeals correctly cited the *Cordero* decision in the Circuit Court of Appeals for its caveat to carriers that their "decision to refuse passage to any person must be premised on a valid concern for the safety of the flight and the individuals on that flight."

Of course, the *Cordero* facts were entirely dissimilar to the facts in this case, i. e., *Cordero* involved the refusal to carry a passenger who was not ill, but was mistakenly thought to be another unruly passenger.

The instant case involved the refusal of a terribly ill passenger, based upon valid reasons authorized by the

Federal Aviation Act, 49 U. S. C. §1511 and the American Airlines' tariff, which is quoted at page 5 of the decision of the New York Court of Appeals.

There is absolutely no disagreement between the decision of the New York Court of Appeals and the Ninth Circuit Court of Appeals decision in *Cordero,* since the cases involved vastly dissimilar facts.

II.

The issue presented does not warrant review by the United States Supreme Court.

It is respectfully submitted that the issue presented is not so important as to warrant review by the Supreme Court of the United States.

Petitioner states that the decision of the New York Court of Appeals jeopardizes the right of every handicapped person to travel and, as a result of the decision, there is nothing to prevent an airline from refusing to carry any handicapped person on the grounds that the safety of the flight would be affected.

This statement is grossly misleading.

The fact that petitioner had a mysterious and undiagnosed illness and had no medical certificate and had no one to accompany her provided the basis for refusing to board petitioner.

The decision of the New York Court of Appeals poses no danger to other wheel chair confined persons.

In fact, the decision clearly states that "a carrier who uses the safety issue as a sham in order to accomplish another purpose will not be insulated from liability."

Resultingly, if an air carrier were to embark on a policy of excluding wheel chair confined persons for no other reason than that they were confined to wheel chairs, the decision of the New York Court of Appeals would supply convincing authority to hold the carrier liable for their actions.

It is respectfully submitted that petitioner's analogy between all wheel chair confined persons and petitioner, who was suddenly paralyzed with a mysterious and undiagnosed illness, is untenable.

The decision of the New York Court of Appeals poses no danger that wheel chair confined persons will be relegated to second class citizenship, as argued by petitioner.

Petitioner states that the only difference between petitioner and other wheel chair confined persons was that petitioner had a urine collecting bag strapped to her side.

This is another misleading statement.

Petitioner had a mysterious and undiagnosed illness.

Petitioner was also in obvious pain and crying out in anguish.

Petitioner also states that respondent had 24 hours notice of petitioner's condition.

However, as pointed out by the New York Court of Appeals, respondent first saw petitioner three-quarters of an hour before the flight and it was only then that respondent could see how ill petitioner was.

Upon all of the foregoing, it is respectfully submitted that the decision of the Court of Appeals does not endanger the rights of otherwise normal wheel chair confined persons and the decision actually provides further protection for their right to travel.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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